

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **VICE CHAIRMAN MIKE SPRAGUE**, on March 13, 2003
at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Dale Mahlum, Chairman (R)
Sen. Bob Keenan (R)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddie McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 145, 1/27/2003; HB 169,
1/23/2003; HJ 20, 2/24/2003
Executive Action: HJ 20; HB 165

{Tape: 1; Side: A}

HEARING ON HJ 20

Sponsor: REPRESENTATIVE DON ROBERTS

Proponents: Dee Brown, Representative, HD 83, Hungry Horse
Robin Cunningham, private citizen
Susan Good, various medical occupations

Opponents: NONE

Informational Witnesses: Kevin Braun, Office of Legal Services,
Department of Labor & Industry (DLI)

Opening Statement by Sponsor:

REPRESENTATIVE DON ROBERTS, HD 10, Billings, read the title of HJ 20. He stated there is a need for state legislative oversight of professional occupational boards because many of the boards are distant from the people they serve and protect, and many are ignoring their own rules, regulations, and so forth. He explained the boards have been transferred from the Board of Commerce to the Department of Labor and Industry to encourage better performance. He also stated audits required by the bill will be review by the 59th Legislature.

Proponents' Testimony:

Dee Brown, Representative, HD 83, Hungry Horse, said the Audit Committee asks for and receives performance and financial audits from all facets of government on a regular basis. She said the Board of Licensers was checked over twenty years ago when there was a sunset provision put in the statute. At that time, every board had to appear before the legislature and defend their right to exist. She explained sunset clauses were too expensive and used too many resources, however, performance audits are within the scope of what is permissible under current law. These performance audits will provide the legislature with much needed information on the boards. **REP. BROWN** emphasized it is time for some oversight and standardization of the processes for boards and commissions of the state.

{Tape: 1; Side: A; Counter: 4.0}

Robin Cunningham, private citizen, testified he has sat on the Board of Outfitters, and gone through several audits. He believes audits are a good idea. He also stated this legislation will provide some organization for those audits.

Susan Good, various medical occupations, conveyed some past problems the Board of Hearing Aide Dispensers have experienced during their meetings, especially in executive sessions. She stated the Board of Nursing is completely out of control and often times vote on issues before hearing testimony, comments, and so forth. With regard to the Board of Realty Regulation, she state they presently have a person sitting on the board who has been licensed without proper paperwork. She stated these departments and boards need help, and she urged support of the resolution.

Questions from Committee Members and Responses:

SENATOR CAROLYN SQUIRES asked **Ms. Good** how board persons could be disciplined. **Ms. Good** replied when the audit committee goes in, she believes they will find some horrible things and will then be able to make recommendations on how to address these issues.

SEN. SQUIRES inquired of **Kevin Braun, Legal Services Division, DLI,** about disciplinary actions available when board members do not comply. **Mr. Braun** replied board members who operate in violation of the law might be removed, with cause, by the Governor. In his experience, no board member has ever been removed; however, some have been gently reprimanded.

VICE-CHAIRMAN MIKE SPRAGUE referring to legislation passed a few years ago which required that legislators be kept in the loop regarding implementation and rulemaking processes of the various boards. He does not believe this had been occurring, and he does not think people should be fired for not voting on something or not showing up. He inquired whether the legislature should giving power to the Governor to hire and fire board members. **Mr. Braun** said most of the boards are, by statute, administratively attached entities that can enter into quasi-legislation and rulemaking without interference from the Department. He stated, by definition, these boards are executive branch agencies. Thus, the Governor as chief policy maker can say yes or no to various activities. **VICE-CHAIRMAN SPRAGUE** asked from where does the resentment arise between various boards and the Legislature. And, what is the Legislature doing wrong? **Mr. Braun** said he does not believe Legislature is doing anything wrong because there are some very functional boards out there; very few that choose their own independent path. He stated he does not have an absolute solution for this problem.

SENATOR VICKI COCCHIARELLA asked if the Legislature has the right to review board members every other year and vote on them. **Mr. Braun** replied he was not familiar with that to which **SEN.**

COCCHIARELLA referred.

SEN. COCCHIARELLA asked **REP. ROBERTS** to explain the process the auditor's office would go through in order to implement this resolution. **REP. ROBERTS** replied the first step would be to find out from where problems arise. He stated one reason some boards get so out of control is there is no one to whom an appeal may be made; this may help with that particular problem. He also emphasized the boards were originally created to protect the citizens of Montana in areas of special interest. **SEN.**

COCCHIARELLA asked about how legislative audits were going to be accomplished. **REP. ROBERTS** said the audits will become a part of the normal process and, for the most part, they already know where most of the problems are. **SEN. COCCHIARELLA** asked if a legislative auditor would be doing the audits. **REP. ROBERTS** said yes. **SEN. COCCHIARELLA** asked, if this resolution gets prioritized and is a subject of the legislative audit committee, would it be advisable for 150 legislators to write their ideas so that they know where the problems are specifically for these boards. **REP. ROBERTS** replied that was how the original plan was envisioned.

SEN. SQUIRES commented there has to be some disciplinary action for an individual who does not respond to the people they serve.

{Tape: 1; Side: B}

Closing by Sponsor:

REP. ROBERTS stated, at the present time, if a complaint arises because a decision is in violation of the rules and regulations a board is supposed to follow there is no process for appeal. He outlined some of the rules boards are not adhering to. **REP. ROBERTS** believes this kind of activity could place a damper on people's enthusiasm and desire to participate on various boards. He also believes professional licensing boards should answer to the Legislature.

HEARING ON HB 145

Sponsor: REPRESENTATIVE JOE MCKENNEY

Proponents: Jill Gerdrum, State Auditor's Office
Aidan Myhre, Montana Comprehensive Healthcare
Association (MCHA)
Stuart Doggett, Blue Cross/Blue Shield

Roger McGlenn, Independent Insurance Agents
Association of Montana
Frank Cote, Health Insurance Association of
America
Greg Van Horssen, State Farm Insurance
Don Allen, Montana Association of Insurance and
Financial Advisors
Jacqueline Lenmark, American Insurance Association
and the American Council of Life Insurers

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

REPRESENTATIVE JOE MC KENNEY, HD 49, southwest Great Falls,
brought forward HB 145 at the request of the state auditor's
office.

{Tape: 1; Side: B; Counter: 2.8}

Proponents' Testimony:

Jill Gerdrum, State Auditor's Office, submitted written testimony
EXHIBIT(bus53a01). She outlined the highlights of the bill,
stating it was a housekeeping bill. She explained over the last
biennium, her office reviewed the various insurance statutes with
the intent of identifying sections which have become outdated or
incorrect due to other changes in law. Her office has agreed
with industry that should anything controversial arise in the
bill, it will be removed. She noted the various changes were
requested by the Legislative Auditor, various industry members,
and others.

Aidan Myhre, Montana Comprehensive Healthcare Association,
referring to page 28 of the bill, stated her organization
requests one minor change. She provided the Committee with a
copy of the proposed amendment **EXHIBIT**(bus53a02). Ms. Myhre also
provided an explanation about her organization, including the
services they provide.

Stuart Doggett, Blue Cross/Blue Shield, presented written
testimony **EXHIBIT**(bus53a03).

{Tape: 1; Side: B; Counter: 11.5}

Roger McGlenn, Independent Insurance Agents Association of Montana, rose in support of **HB 145**.

Frank Cote, Health Insurance Association of America, urged support of **HB 145**.

Greg Van Horssen, State Farm Insurance, rose in support of **HB 145**.

Don Allen, Montana Association of Insurance & Financial Advisors, conveyed his organizations support for the bill and the amendments.

Jacqueline Lenmark, American Insurance Association and the American Council of Life Insurers, stated her organization supports the bill and the amendments.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked **Ms. Myhre** to explain how her proposed amendment would work (see, **EXHIBIT 2**). **Ms. Myhre** replied the reason for adding state into this amendment arose because when **I-146** passed it gave **MCHA** an opportunity to receive some funding from the state to assist with the program. She explained if the federal government gives a grant and **MCHA** receives private contributions for the program, the government wants to be certain the money is specifically earmarked for low-income subsidy programs. She stated **MCHA** does not want assessment money paid by insurance carriers to go to low-income subsidy programs without the board having some discretion.

SEN. SQUIRES asked **Ms. Myhre** if there are any other programs presently providing assistance to low-income subsidies. **Ms. Myhre** replied there is a pilot program which began in 2001 with \$1.2 million. She said **Blue Cross/Blue Shield** is the lead carrier for **MCHA**, and they benefit from their networks and administration. She said they hope to continue these types of programs.

SENATOR KELLY GEBHARDT asked what kind of rulemaking authority would the insurance commissioner have. **Ms. Gerdrum** replied it is with respect to the updated language from the **National Association of Insurance Carriers (NAIC)** for the Federal Reserve book entry system. **Ms. Gerdrum** then deferred to **Jim Borkhardt**,

Jim Borkhardt, State Auditor's office, said when the **NAIC** put in the book entry system it has a second model for rules. He said it is a package and without the rules they loose the impact of

the original law. **SEN. GEBHARDT** said the Legislature makes the rules and they can abide by them, and he believes the rules should be in the bill. **Mr. Borkhardt** said there are a number of other instances where the **NAIC** has established model laws and rules. **SEN. GEBHARDT** asked why they did not adopt the rules rather than have the authority to make those rules plus the creation of many more. He stated he has a problem with the rule making authority as many people difficulty complying with the law when there are volumes of rules to follow. He said he did not understand why those rules where not available to the Committee. **Mr. Borkhardt** replied his office would provide the information.

SENATOR DON RYAN requested **Ms. Gerdrum** comment on the proposed amendment. **Ms. Gerdrum** replied her agency is in support of the amendment.

{Tape: 2; Side: A}

Closing by Sponsor:

SEN. MC KENNEY urged support of this bill.

{{Tape: 2; Side: A; Counter: 1.4}}

HEARING ON HB 169

Sponsor: REPRESENTATIVE JIM KEANE, HD

Proponents: Jill Gerdrum, State Auditor's Office
Roger McGlenn, Independent Insurance Agents of Montana (IIAM)
Don Allen, Montana Association of Insurance & Financial Advisors (MAIFA)
Kelly Reisbeck, Montana Bail Bondsmen Association
Jacqueline Lenmark, American Insurance Association (AIA) & American Council of Life Insurers (ACLI)

Opponents: NONE

Informational Witnesses: Alicia Pichette, Licensing Bureau Chief,
State Auditor's office

Opening Statement by Sponsor:

REPRESENTATIVE JIM KEANE, HD 36, Butte, opened on **HB 169**. He explained the bill provides uniformity and reciprocity with other states. He said fees will be biennial and it will improve access

to licensers, thus assisting Montana producers. He said it allows the licensee to put his or her license on inactive status if he or she is in the military, and requires an examination for independent adjustors.

Proponents' Testimony:

Jill Gerdrum, State Auditor's Office, submitted written testimony **EXHIBIT (bus53a04)**. She said they are offering an amendment that would extend the applicability date for background examinations. She said there is no rulemaking authority in this bill, however, when they change over to this biennial renewal cycle there is a lot of detailed and technical changes that need to happen. She said they renew based on the first letter of the last name of the agent and that will be changed, etc. She said it would not make sense to put all of those initial changes into the statute. She said they do have rulemaking authority in section 4.

{Tape: 2; Side: A; Counter: 11.7}

Roger McGlenn, IIAM, said the amendments in the House standardized the language between sections 2 and 12 of the bill. Referring to page 2, line 3, of the bill the word they requested in the House was examination and they would like this changed. He said on page 12, lines 18 and 19, there is similar language pertaining to this. He said many of their members are licensed in as many as 30 states. He said the requirements between each state are very complex and this uniformity will help. He said this uniformity will also help with state regulation of insurance.

Don Allen, MAIFA, stated his organization would also like the word application changed to examination in Section 2. He said they also felt the applicability date should be extended. He said uniformity is important for those individuals who would like to be licensed in multiple states.

Kelly Reisbeck, Montana Bail Bondsmen Association, said this would help ensure professionalism and quality agents through continuing education and background checks.

Jacqueline Lenmark, American Insurance Association and American Council of Life Insurers, said they support uniformity in their industry and they support the amendments.

{Tape: 2; Side: A; Counter: 20.5}

Questions from Committee Members and Responses:

SEN. GEBHARDT asked **Ms. Gerdum** if they are going to make a uniform date for the licensing. **Ms. Gerdum** said that is part of what will be clarified in the rules and they are looking at birth date for renewal. She said in their office they could not renew all in the same month because there is too much paperwork. **SEN. GEBHARDT**, providing an example of an individual who pays for a license in October whose birthday is in April, asked would the fee be prorated. **Ms. Gerdum** said they do not charge resident agents fees. She said non-resident agents pay a biennial fee of \$50.

SEN. SQUIRES, referring to Section 17 of the bill, stated she had a proposed amendment from **Steve Hample, Bozeman** (see, **EXHIBIT (bus53a05)**). She provided the Committee with a copy and asked **Ms. Gerdum** to comment. **Ms. Gerdum** said **3(b)** was current language. She stated they have a license called a consultant license and they do not sell insurance but they evaluate insurance plans, etc. She said they get paid by a fee rather than a commitment. She said consultants are required to take a detailed test because of the responsibility of taking on schools and large businesses, etc. She said the question in section 17 is if they would add financial planner.

Ms. Gerdum referred the question to **Alicia Pichette, Licensing Bureau Chief, State Auditor's office**, who said they would not consider adding Certified Financial Planners because they have certain licensing requirements. She said financial planners do not meet the fundamental reason they exempt lawyers and CPA's.

Closing by Sponsor:

REP. KEANE supported the amendment between the agents and Auditor's office and urged support of the bill.

{Tape: 2; Side: A; Counter: 28.2}

{Tape: 2; Side: B}

EXECUTIVE ACTION ON HJ 20

Motion/Vote: **SEN. GEBHARDT** moved that HJ 20 BE CONCURRED IN.
Motion carried 8-0.

EXECUTIVE ACTION ON HB 165

Motion: **SEN. GEBHARDT** moved that HB 165 BE CONCURRED IN.

Discussion:

Eddye McClure, Legislative Staff, said there was some discussion regarding an amendment which would limit the bill's application to games presently offered by the Montana Lottery. However, if the name for PowerBall, for example, were changed it would basically be a new game. She said there were no new amendments for this bill.

SEN. COCCHIARELLA stated the ramification for killing this bill is the huge negative impact on the general fund. She is not willing to let go of any revenue. She also stated the intention of the bill is to enable Montana to keep PowerBall in the event an international lottery becomes a member.

Vote: Motion that HB 165 BE CONCURRED IN carried 5-3, with SENS. ANDERSON, RYAN, AND SQUIRES voting NO.

ADJOURNMENT

Adjournment: 10 A.M.

SEN. MIKE SPRAGUE, Vice Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus53aad)